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11 UNITED STATES BANKRUPTCY COURT  
12 EASTERN DISTRICT OF CALIFORNIA  
13 SACRAMENTO DIVISION

14 CITY OF STOCKTON, CALIFORNIA

15 Debtor,

16 Case No: 2012-32118

17 Chapter 9

18 **MEMORANDUM OF STOCKTON CITY  
19 EMPLOYEES ASSOCIATION, ET AL.  
20 REGARDING IMPAIRMENT OF PENSIONS  
21 AND IN SUPPORT OF STOCKTON'S PLAN  
22 OF ADJUSTMENT**

23 Date: October 1, 2014  
24 Time: 10:00 a.m.

25 Hon. Christopher Klein

26 The Stockton City Employees Association, Stockton Professional Firefighters – Local  
27 456 and Operating Engineers Local No. 3 (“Unions”) submit this memorandum in response to  
28 the Court’s solicitation of briefs on the subject of the impairment of vested pension rights and in  
support of the proposed Plan of Adjustment (“Plan”) of the City of Stockton (“City”).<sup>1</sup>

<sup>1</sup> The Unions represent the majority of the City’s employees.

1 **I. INTRODUCTION**

2 At the July 8, 2014, hearing on confirmation of the City's Plan, the Court analyzed the  
3 relationship between the City and the California Public Employees Retirement System  
4 ("CalPERS"), and identified the following issues relating to the applicability of certain provisions  
5 of the California Public Employees Retirement Law and the impact upon the parties if the City  
6 were to withdraw from CalPERS in order to impair the vested pension rights of the City's  
7 employees and retired employees:  
8

- 9 a) Is the relationship between the City and CalPERS both voluntary and  
10 contractual?  
11 b) May the contract between the City and CalPERS be assumed or rejected as an  
12 executory contract, notwithstanding California Government Code §20487?  
13 c) If the City rejects the CalPERS contract, does CalPERS bear any risk of loss  
14 arising from the City's discontinuance of contributions?  
15 d) Does the entire economic risk of pension impairment instead fall on the City's  
16 employees and retired employees who are members of CalPERS?

17 Without directly addressing the above questions, the Unions respectfully suggest that  
18 the Court's analysis failed to consider issues that are necessary to be able to answer the  
19 Court's ultimate question of why the Court should confirm the Plan without impairment of  
20 vested pension rights. In short, the Court's analysis led to the water's edge, but failed to take  
21 the plunge into the legal and factual impacts of pension impairment as it applies to the City's  
22 employees, to the City and to the City's creditors. This memorandum will address the issues  
23 left unaddressed by the Court, but first will provide some essential contextual background.

24 Under California law, the pension benefits of California public employees are  
25 considered an integral part of their compensation; albeit payment is deferred until  
26 retirement. (*Wallace v. City of Fresno* (1954) 42 Cal. 2<sup>nd</sup> 180, 184.) Further, if the employees  
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1 of a municipality are organized into collective bargaining units, the compensation of the  
 2 employees, including the pension component (within the framework of the California Public  
 3 Employees' Retirement Law), is required to be bargained for between the municipality and the  
 4 bargaining units. The result of the negotiations is a labor contract called a Memorandum of  
 5 Understanding ("MOU"). (See, Cal. Gov't. Code §§ 3500-3511.) In the present case, the City  
 6 has entered into MOUs with each of the Unions,<sup>2</sup> and each of the MOUs incorporates the  
 7 City's pension obligations to the employees covered by the MOUs, including specifically the  
 8 contribution rates of the City and the members/employees. (See, Modified Disclosure  
 9 Statement with respect to First Amended Plan for the Adjustment of Debts of City of Stockton,  
 10 California, Docket No. 1215, p. 19 [The level of pension benefits is specified in the City's  
 11 various labor agreements.])<sup>3</sup>

12 Furthermore, as part of the AB 506 mandated mediation process (California  
 13 Government Code §§ 53760, *et. seq.*), the Unions and their members agreed to modify the  
 14 existing MOUs in order to facilitate the City's ability to propose a feasible plan of adjustment.  
 15 (*Id.* at 24.) The many concessions favorable to the City with respect to compensation, benefits  
 16 and work rules are too numerous to describe here, but they involved significant sacrifices by  
 17 the employees **on top of other sacrifices made by the organized employees in the**  
 18 **months and years leading up the AB 506 mediation process.** (*Id.* at 21.) The negotiated  
 19 concessions agreed to during the AB 506 process were contingent upon the City's agreement  
 20 to leave pension rights unimpaired in its plan of adjustment<sup>4</sup>

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 23 <sup>2</sup> The City has at least eight MOUs, and a typical MOU is 50 or more pages in length.

24 <sup>3</sup> Excerpts of the Modified Disclosure Statement are included as Appendix 1 to this  
 25 Memorandum.

26 <sup>4</sup> As discussed below at footnote 5, the City concedes that if it withdraws from CalPERS  
 27 and ceases making contributions it will be in breach of its labor agreements.

1 With the above background, the Unions will explain why denial of confirmation of the  
 2 City's proposed Plan on the ground that it does not impair pensions would be devastating to  
 3 the City, would be needlessly harmful and disruptive to employees, and would be inconsistent  
 4 with the structure of chapter 9 of the Bankruptcy Code and the letter and spirit of California's  
 5 public pension law.

## 6 **II. ARGUMENT**

### 7 **A. The City cannot impair its employees' vested pension rights without** 8 **rejecting its MOUs.**

9 As shown above, the pension obligations which the City has undertaken are  
 10 incorporated into the MOUs negotiated between the City and the Unions. The MOUs  
 11 undoubtedly are executory contracts. (*In re City of Vallejo*, 403 B.R. 72, 77 (Bkrtcy. E.D. Cal.  
 12 2009), affirmed, 432 B.R. 262, 270 (E.D. Cal. 2009)). Moreover, because the MOUs contain  
 13 many provisions relating to compensation, benefits and work rules, the City cannot simply  
 14 reject the portions of the MOUs relating to pensions and assume all the provisions favorable to  
 15 the City negotiated with the Unions. If a debtor assumes a contract, it must do so *cum onere*,  
 16 with all the burdens as well as the benefits. (*NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531  
 17 (1984); see *Cinicola v. Scharffenberger*, 248 F.3d 110, 119-20 (3d Cir. 2001); and *In re Kopel*,  
 18 232 B.R. 57, 63-64 (Bkrtcy. E.D.N.Y. 1999) ["A debtor cannot simply retain the favorable and  
 19 excise the burdensome provisions of an agreement."].<sup>5</sup>

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 24 <sup>5</sup> Some of the MOUs may have been adopted or extended after the commencement of  
 25 this case, and hence may not technically be executory contracts, and instead may be  
 26 administrative obligations of the City. Nevertheless, the principle that an integrated contract  
 27 cannot be selectively breached remains the same. Moreover, the damage claims for breach  
 28 would be administrative claims.

1 Hence, in order to impair pension rights of its employees, the City must not only  
2 withdraw from CalPERS, but it also must reject all of its MOUs in their entirety.<sup>6</sup> Needless to  
3 say, that would invite costly and disruptive chaos with regard to 1) the City's relationship with  
4 its employees, 2) its ability to carry out the operations of the City, and 3) its ability to propose a  
5 feasible plan of adjustment. Presumably, no party in interest would desire such a result.

6 **B. Grounds do not exist for rejection of the City's MOUs**

7 To the extent some or all of the MOUs are executory, the City would have two choices  
8 following failure of confirmation of the proposed Plan. It could either file a motion to reject the  
9 MOUs before proposing a new plan or include rejection of the MOUs in a new proposed plan.  
10 However, under either scenario, the rejection of the MOUs would require the Court's  
11 approval.<sup>7</sup> Under the standards established in *NLRB v. Bildisco & Bildisco*, 465 U.S. 513,  
12 supra, which standards are applicable in chapter 9 cases, (*In re City of Vallejo*, 432 B.R. 262  
13 supra, affirming 403 B.R. 72 , supra), rejection of the MOUs should be disapproved. The  
14 criteria that the City must satisfy to meet the *Bildisco* test are 1) the existing MOUs are  
15 burdensome, 2) the balance of equities favors rejection, and 3) the debtor negotiated  
16 reasonably with the unions and was unable to reach an agreement modifying the MOUs. (*In re*  
17 *City of Vallejo*, 432 B.R at 273, supra.)  
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23 <sup>6</sup> In its Modified Disclosure Statement, Docket 1215, at p. 21, supra, The City recognized  
24 that "rejection of the CalPERS contract would violate the City's contracts with its nine labor  
25 organizations."

26 <sup>7</sup> Section 1123(b)(2) of the Bankruptcy Code (incorporated in chapter 9) states that  
27 "subject to section 365," the plan proponent may assume or reject executory contracts.  
28 Section 365 requires the court's approval of assumption or rejection of an executory contract.

1 On the first issue, the City “must demonstrate that the [MOUs] burden[] the debtor’s  
 2 ability to reorganize.” (*In re City of Vallejo*, 432 B.R. at 273.) The MOUs were negotiated  
 3 between the City and the Unions for the express purpose of aiding the City’s ability to survive  
 4 financially and/or to confirm a feasible plan of adjustment. In addition, generally  
 5 uncontroverted evidence and testimony submitted during the confirmation trial established that,  
 6 with the MOUs as negotiated, the Plan is feasible. Under these circumstances, it is difficult to  
 7 conceive of any argument that the MOUs burden the City’s ability to reorganize.<sup>8</sup> On the  
 8 second issue, as will be discussed below, the City would have a very high burden to overcome  
 9 to establish that the equities favor rejection of the MOUs. Indeed, the evidence would weigh  
 10 heavily against the City on that issue. Finally, on the third issue, one cannot predict in  
 11 advance how that would play out; but, if nothing else, the City would have to engage in  
 12 prolonged negotiations with most or all of its bargaining units while its financial situation  
 13 worsened. In sum, obtaining approval of rejection of the MOUs is unlikely.  
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16 **C. Rejection of the MOUs, if permitted, would be catastrophic for the City, its**  
 17 **employees, its creditors and its residents.**

18 **1. Numerous adverse consequences would flow from withdrawing from**  
 19 **CalPERS and rejecting the MOUs. Therefore, the equities disfavor**  
 20 **rejection of the MOUs.**  
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22 As discussed above, in order to impair pensions of current employees, the City would  
 23 have to withdraw entirely from CalPERS and reject its several MOUs. Putting aside the likely  
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25 <sup>8</sup> Factual assertions in pleadings, unless amended, are considered judicial admissions  
 26 conclusively binding on the party who made them. (*American Title Ins. Co. v. Lacelaw Corp.*,  
 27 861 F. 2<sup>nd</sup> 224 (9<sup>th</sup> Cir. 1988).)

1 mass employee exodus discussed below, the following are some of the consequences that  
2 would flow from the rejected contracts.

- 3 a. CalPERS would assert a claim for \$1.5 billion-plus and contend the claim is  
4 secured by a statutory lien in the City's assets.
- 5 b. The City's employees, soon-to-be former employees, and retired employees  
6 would hold substantial rejection damage claims, in addition to the claims of  
7 retirees based on termination of retiree health benefits.<sup>9</sup>
- 8 c. The City would have to propose a new plan that adequately provided for the  
9 claims of CalPERS, employees and retirees. Both CalPERS and the  
10 employees/retirees undoubtedly would reject any plan that did not adequately  
11 provide for their claims, leading to a second contested confirmation trial. If the  
12 plan adequately provided for said claims, it would likely negate the benefit  
13 obtained in reducing pensions.
- 14 d. The City would be required to negotiate new MOUs with the employees'  
15 bargaining units, under less than optimal bargaining conditions.<sup>10</sup> The process  
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18 <sup>9</sup> The employees' claims could be administrative claims under 11 U.S.C. § 503(b).

19 <sup>10</sup> California Government Code § 3505 provides that, if government agency employees  
20 have formed a bargaining unit, "[t]he governing body of a public agency, or [its agents], shall  
21 meet and confer in good faith regarding wages, hours, and other terms and conditions of  
22 employment with representatives of such recognized employee organizations, ...and shall  
23 consider fully such presentations as are made by the employee organization on behalf of its  
24 members prior to arriving at a determination of policy or course of action." There are further  
25 elaborate procedures to be followed if the parties do not reach a tentative agreement as a  
26 result of meeting and conferring in subsequent sections of the Government Code. Section 903  
27 of the Bankruptcy Code provides that chapter 9 does not limit or impair a state's power to  
28 control by legislation the exercise by municipalities of governmental powers. The power to  
establish compensation and benefits of employees is such a governmental power, and the  
State of California has provided for how that power is to be exercised when the agency's  
employee have formed bargaining units. Approval of a plan of adjustment that attempted to by-  
pass the collective bargaining requirements imposed on municipalities by California law would  
limit or impair the power of the State of California to control the exercise of the City's

1 would be prolonged and expensive. The result may be a loss to the City of the  
2 concessions voluntarily made by the employees, further negating any benefit of  
3 pension reduction.

- 4 e. The tenuous labor peace the City presently enjoys could be jeopardized with  
5 unknown consequences to the City's operations.
- 6 f. All of the above would delay confirmation for many months or years, while the  
7 City's treasury is bled by legal costs and its management distracted by issues not  
8 of the City's own making.

9 In sum, rejecting or breaching the MOUs in order to impair the vested pension rights of  
10 employees would severely undermine the City's ability to confirm a feasible plan of adjustment.

11 **2. The exodus of experienced and qualified employees would be rapid**  
12 **and massive.**

13 The overhang of bankruptcy has already taken its toll on the City's ability to hire and  
14 retain critical employees, especially with regard to public safety, as the evidence before the  
15 Court has shown. Reducing pensions and concurrently creating uncertainty about other  
16 aspects of compensation and work rules would greatly exacerbate the existing situation.  
17 Common sense leads to the conclusion that under these circumstances as many employees  
18 as are able to do so would leave their employment with the City for opportunities elsewhere.  
19 Moreover, those most likely to have such opportunities undoubtedly would be the most skilled  
20 and experienced employees.<sup>11</sup>

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22 governmental powers and therefore violate 11 U.S.C. § 903. (See, *New York City Off-Track*  
23 *Betting Corporation*, 434 B.R. 131, 141 (Bkrtcy. S.D.N.Y. 2010) [“(A) municipality could not, by  
24 it (sic) consent, ... do an act that would be in violation of a law ... of the state controlling the  
25 municipality.”].)

26  
27 <sup>11</sup> The suggestion that, having made substantial compensation and benefits sacrifices and

1           There are three reasons why the City's employees would be counseled to seek  
2 employment elsewhere: 1) considerable uncertainty will exist with respect to whether the City  
3 can survive financially in view of the demoralization of its workforce and the massive claims  
4 that would be asserted against it following withdrawal from CalPERS and rejection of the  
5 MOUs; 2) the City's competitive position in hiring and retaining qualified employees would  
6 further deteriorate in the face of an improving market for public employees; and 3) the impact  
7 of § 7522.02(c)(1) of the Public Employees' Pension Reform Act ("PEPRA") (California  
8 Government Code §§ 7522, *et seq.*)

9           First, withdrawal from CalPERS and rejection of the MOUs would create significant  
10 uncertainty regarding the City's future. It is not clear that withdrawing from CalPERS would be  
11 a net positive for the City financially. If the City did not replace its CalPERS pension system, it  
12 would have to commence participation in Social Security and make contributions on behalf of  
13 its employees to the Social Security System on a permanent basis. The City may also find that  
14 in order to retain and hire qualified employees, it would need to establish a substitute pension  
15 plan. In addition, the City would have potentially billions of dollars of new claims asserted  
16 against it by CalPERS, employees and retirees. All this uncertainty undoubtedly would not be  
17 an inducement for retention of employees.<sup>12</sup>

18           Second, the City's employees would be aware of a much more positive employment  
19 environment generally for municipal employees in California than existed two or more years  
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21 then having their pensions substantially impaired, the City's employees would simply settle in  
22 and accept these financial blows is more than risible. The obvious questions that the City's  
23 employees would ask are 1) can things get worse if I stay here, and 2) can things get better if I  
24 leave here? As discussed below, the answer to both questions is yes.

24 <sup>12</sup> When the City of San Jose placed an initiative on the ballot in order to reduce its  
25 employees' pension benefits, there was an alarming exodus of public safety  
26 employees. (Favro, M. "Pension Reform Fear: SJPd Resignation, *NBC Bay Area* on the Rise,"  
27 Friday, June 8, 2012. Downloaded on March 28, 2014 from  
<http://www.nbcbayarea.com/news/local/Pension-Reform-Fear-SJ-Resignation-on-the-Rise-158213725.html>. [Attached as Appendix 2].)

1 ago when the City's financial crisis peaked and it commenced this case. (See, Johnston, D.C.  
2 "State's job growth defies predictions after tax increase." *Sacramento Bee*, July 20, 2014.  
3 [Attached as Appendix 3].) In the present environment, therefore, employees may feel less  
4 "locked into" their jobs than would have been the case several years ago.

5 Third, in 2013, California enacted the Public Employees' Pension Reform Act  
6 ("PEPRA"), California Government Code §§ 7522, *et seq.* Section 7522.02(c)(1) provides in  
7 essence that, when an employee of one CalPERS participant agency leaves the employment  
8 of that agency and becomes re-employed by another CalPERS participant agency, the  
9 employee will be treated with respect to pension benefits as if the employee had been  
10 employed continuously by the second agency. In other words, the contributions made by the  
11 City on behalf of a former employee would be transferred to the employee's account with his or  
12 her new employer as if the employee had had continuous service with the new employer. The  
13 critical element of § 7522.02(c)(1) applicable here is that, in order for the employee to obtain  
14 the benefit of the section, there cannot be a break in service in employment with a CalPERS  
15 participant agency to another CalPERS participant agency of more than six months. Thus,  
16 once the City withdrew from CalPERS, the six-month clock would start running on the City's  
17 employees. One can be certain that employees of the City would be aware of this important  
18 time frame.

19 Consequently, it may be said that a ruling requiring the City to take the drastic step of  
20 rejecting all its MOUs in order to impair vested pension rights would create a "perfect storm" for  
21 a mass and rapid exodus of the City's most qualified employees.

1           **D.     Requiring the City to impair vested pension rights would be contrary to the**  
2           **structure of chapter 9 and the spirit of California law regarding the high**  
3           **value placed n protection for public employee pensions.**

4           **1.     The structure of chapter 9 as applied in this case.**

5           In the exercise of its business judgment, the City determined to propose a plan of  
6 adjustment that assumed both its contract with CalPERS and its MOUs with its employees'  
7 bargaining units that left in place the many concessions regarding compensation, benefits and  
8 work rules obtained from its employees and the vested pension rights of its employees and  
9 retired employees. (Modified Disclosure Statement, Docket at pp. 21-22.) The City further  
10 determined and presented largely uncontested evidence that its plan is feasible with its  
11 assumption of the aforementioned executory contracts. Nevertheless, the Court has  
12 questioned why it should confirm the City's plan without requiring the City to reject the  
13 CalPERS contract and its MOUs in order to impair pensions. The Unions respectfully contend  
14 that, under the above circumstances, such a ruling would be contrary to the structure of  
15 chapter 9.

16           It cannot be denied that chapter 9 significantly restricts the bankruptcy court's judicial  
17 powers. (11 U.S.C. §§ 903 and 904.) With respect to confirmation of a plan, the court's  
18 authority is limited to making the findings necessary for confirmation under 11 U.S.C. § 943(b).  
19 Most of those findings are somewhat mechanical, which leaves the court with essentially two  
20 somewhat discretionary findings; 1) whether the plan is in the best interest of creditors and 2)  
21 whether the plan is feasible. (11 U.S.C. § 943(b)(7).) <sup>13</sup>

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24 <sup>13</sup>     The Unions will not discuss the issue of whether the Plan was proposed in good faith  
25 because they believe the City fully addressed that issue in its Memorandum In Support of  
26 Confirmation (Docket No. 1243), and they further belief such a finding is compelled on account  
27 of the ample reasons why the City chose not to impair pensions, the many concessions made  
28 by employees through the Unions to facilitate the feasibility of the Plan, and the cancellation of  
retiree health benefits. The issue of feasibility was discussed above.

1           Nevertheless, findings within that limited scope must be made in consideration of the  
2 overriding concerns of §§ 903 and 904. The “best interest” test in chapter 9 is a limited  
3 concept. Courts and commentators have interpreted it to require “a reasonable effort by the  
4 municipal debtor that is a better alternative to its creditors than dismissal of the case....” In  
5 addition “[t]he municipal debtor is not required to meet too strict a standard....The court must  
6 temper its examination into the debtor’s ability to pay with due respect for the debtor’s exercise  
7 of its political and governmental power.” (6 *Collier on Bankruptcy*, ¶ 943.03[7][a], pp. 943-26  
8 and 27 (16<sup>th</sup> Ed.); see also, *In re Addison Community Hospital Authority*, 175 B.R. 646, 648  
9 (Bkrtcy. E.D. Mich. 1994) [“Because the purpose of municipalities ... is to provide essential  
10 services to its residents, it is crucial that chapter 9 relief allow these entities enough flexibility to  
11 remain viable.”].)<sup>14</sup>

12           Thus, the best interest test cannot be expanded to “hamstring” the City, so that it is  
13 unable to manage its affairs in a manner the City determines in its political and governmental  
14 judgment is in the best interest of both its creditors and its residents. That undoubtedly means  
15 having a qualified and motivated workforce throughout the term of any plan. The City believes  
16 it has achieved that goal by a combination of voluntary concessions made by the Unions in  
17 exchange for a promise to leave vested pension rights unaltered. For the Court to interfere  
18 with the City’s exercise of that exercise of judgment by the City would be contrary to the careful  
19 structure of chapter 9 to protect state sovereignty.

20           As stated in 6 *Collier on Bankruptcy* ¶ 903.02[1], p. 903-3 (16<sup>th</sup> Ed.):

21                           “The state’s retention of its right to control its municipalities unquestionably  
22                           limits the scope of the bankruptcy court’s power to order a municipality to act or  
23                           not to act.”

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26 <sup>14</sup> The viability of the City’s ability to provide essential services to its residents would be in  
27 serious doubt if it loses a substantial portion of its most qualified and experienced workforce.

1                   **2. Denial of confirmation would undermine the goal of achieving the**  
 2                   **adjustment of municipal debt through negotiation and compromise.**

3                   Although not expressly written into chapter 9, it is well understood that successful  
 4 chapter 9 plans are best achieved through negotiation and compromise. This Court has  
 5 expressed that sentiment on several occasions, and actually acted upon it by appointing a  
 6 mediator for the case. The same sentiment is embodied in the California Government Code,  
 7 which, as a pre-condition for eligibility to commence a chapter 9 case requires (with limited  
 8 exceptions) a municipality and its constituents to first attempt to reach a mediated resolution.  
 9 (California Government Code §§ 53760, *et seq.*)<sup>15</sup> Moreover, the City and all parties in  
 10 interest engaged in the negotiation process both before and during the pendency of the case,  
 11 worked hard to agree upon a workable plan, and save but one creditor, reached compromises  
 12 that made the City's Plan virtually consensual.

13                   Denial of confirmation on the basis suggested by the Court at the July 8 hearing would  
 14 undermine all that good faith effort and have much the same effect on the parties as Lucy's  
 15 pulling the football out from under Charlie Brown. Would any party go back to the bargaining  
 16 table under those circumstances, having no assurance that any agreements reached would be  
 17 carried out?<sup>16</sup> Or if parties did agree to "negotiate," they would be advised to hold out for the  
 18 most advantageous terms they can obtain. In sum, mediated plans would be unattainable if  
 19 the parties to chapter 9 cases believe that the court has the power to disregard a delicately  
 20 structured consensual plan and substitute its judgment in place of the debtor's political and  
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22 \_\_\_\_\_  
 23 <sup>15</sup> Even if the AB 506 mediation process does not lead to a resolution without resort to  
 24 chapter 9 and a chapter 9 case ensues, the mediation process, as here, may produce  
 25 agreements that make it more likely that a chapter 9 case will be successfully concluded.

26 <sup>16</sup> A court undoubtedly has the power to reject a negotiated plan that was collusive,  
 27 grossly unfair to some constituents or was patently not feasible. But none of those  
 28 circumstances are true here.

1 governmental judgment. The unions presume the Court does not wish its actions so  
2 interpreted.

3 **3. Impairment of vested pension rights in this case would be contrary**  
4 **to well established California law.<sup>17</sup>**

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6 The Unions acknowledge that chapter 9 permits a municipality to pre-empt some state  
7 laws that would otherwise limit the municipality's ability to restructure its debt. But chapter 9  
8 does not mandate that a municipality disregard applicable state law.

9 Both in the form of legislation and in numerous California Supreme Court decisions, it  
10 has been the policy of the State of California for many decades to provide strong protections  
11 for public employee pension rights. For example, a series of California Supreme Court  
12 decisions have made it clear that vested pension rights cannot be modified or altered unless  
13 an equivalent benefit is provided. (*Allen v. City of Long Beach*, 43 Cal. 2<sup>nd</sup> 128, 287 P. 2<sup>nd</sup> 765  
14 (1955).) In *Kern v. City of Long Beach*, 29 Cal. 2<sup>nd</sup> 848, (1947), the Court explained the policy  
15 behind these protections as follows:  
16

17 "To hold otherwise would defeat one of the primary objectives in providing  
18 pensions for government employees, which is to induce competent persons to  
19 enter and remain in public employment."

20 It is true that many of these cases were based upon the Contracts Clause of the U.S.  
21 Constitution. Nevertheless, much of the language in the leading cases raises a strong  
22 argument that, if the California Supreme Court were asked to decide, it would conclude that  
23 vested pension rights are property rights. The leading California Supreme Court decision is

24 \_\_\_\_\_  
25 <sup>17</sup> It is not necessary for the Court to reach the following issues regarding vested pension  
26 right under California law, if it accepts the arguments above and confirms the plan. However,  
27 the Unions reserve the right to make the arguments below in the event it becomes necessary.



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